

DATE: June 9, 2003

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-02320

DECISION OF ADMINISTRATIVE JUDGE

JOAN CATON ANTHONY

APPEARANCES

FOR GOVERNMENT

Kathryn D. MacKinnon, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant, a 28-year-old engineer, employed by a Defense contractor, used marijuana as a

high school student in 1992/1993 and, despite intermittent periods of abstinence, continued using marijuana during the period from January 1994 to November 2001. He purchased marijuana for his personal use in 1997, 1999, 2000, and 2001, and used LSD and cocaine one time each in 1999. He used psilocybin in 1998 and 2000. On December 14, 2001, in the presence of an agent of the Defense Security Service, Applicant signed a sworn statement admitting his previous drug use and stated he would immediately and permanently discontinue all use of illicit drugs. He used drugs again on July 4 and 6, 2002. Thereafter, Applicant sought counseling for his drug problem and believes he is making progress. Clearance is denied.

STATEMENT OF THE CASE

On November 15, 2002, pursuant to Executive Order No. 10865, *Safeguarding Classified Information Within Industry*, dated February 20, 1960, as amended and modified, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), dated January 2, 1992, as amended and modified, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant that specified reasons why DOHA could not make a preliminary affirmative finding under the Directive that it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. DOHA recommended referral to an Administrative Judge to determine whether clearance should be denied or revoked.

In the SOR, the Government alleged that Applicant was disqualified from obtaining a security clearance because of illegal involvement with drugs (Guideline H). On December 2, 2002, Applicant responded to the SOR and requested that his case be determined on the record in lieu of a hearing. The Government submitted its File of Relevant Material (FORM) on January 24, 2003. The FORM contained the following documents: Item 1: Statement of Reasons dated November 15, 2002; Item 2: Receipt of SOR, dated November 21, 2002; Item 3: Applicant's Answer to SOR, dated

December 2, 2002; Item 4: Questionnaire for National Security Positions (SF-86), signed and dated December 12, 2000, missing answers to questions 17-42; Item 5: Questionnaire for National Security Positions (SF-86), unsigned, dated December 15, 2000, including answers to questions 17-42; Item 6: Statement of Subject, dated December 14, 2001. By letter dated January 29, 2003, a copy of the FORM was forwarded to Applicant, with instructions to submit any additional information and/or objections within 30 days of receipt. By letter dated March 11, 2003, Applicant responded to the FORM and supplied additional information for the record. On March 31, 2003, the case was assigned to me for a decision.

On May 5, 2003, while his case was under consideration, Applicant filed an Aftercare Plan, dated April 17, 2003, listing his aftercare goals, pursuant to a counseling program of approximately seven weeks for drug and chemical abuse. Department Counsel received a copy of Applicant's Aftercare Plan and did not object to it being included in the record of this case. Accordingly, I have admitted Applicant's Aftercare Plan into the record.

FINDINGS OF FACT

In his answer to the SOR, Applicant admitted all of the factual allegations involving Guideline H, Drug Involvement. He also admitted to using marijuana on July 4 and July 6, 2002. Applicant's admissions are incorporated as findings of fact.

After a complete and thorough review of the evidence in the record, and upon due consideration of the same, I make the following additional findings of fact:

Applicant is 28 years old and holds a bachelor of science degree in mechanical engineering. He is employed as an engineer by a Defense contractor. (Item 4) On December 15, 2000, Applicant executed a Security Clearance Application (SF-86) containing a question numbered 27, which reads as follows:

Your Use of Illegal Drugs and Drug Activity - Illegal Use of Drugs.

Since the age of 16 or in the last 7 years, whichever is shorter, have you illegally used any controlled substance, for example, marijuana, cocaine, crack cocaine, hashish, narcotics (opium, morphine, codeine, heroin, etc.), amphetamines, depressants, barbiturates, methaqualone, tranquilizers, etc.), hallucinogenics (LSD, PCP, etc.), or prescription drugs?

In response to question 27, Applicant answered "yes," and admitted to the use of marijuana 15 times and the use of mushrooms (psilocybin) once in 2000; the use of marijuana 20 times, the use of cocaine once, and the use of LSD once in 1999; the use of marijuana 10 times and the use of mushrooms (psilocybin) once in 1998; the use of marijuana 20 times in 1997; the use of marijuana 5 times in 1995, and the use of marijuana 20 times in 1994. (Item 5.)

Applicant began using marijuana in 1992/1993 as a high school student. In a signed sworn statement made on December 14, 2001 to an agent of the Defense Security Service, Applicant admitted to purchasing marijuana for his own use on three occasions in 1997, on six occasions in 1999, on two occasions in 2000, and on two occasions in 2001. His most recent purchase of marijuana occurred in approximately August 2001. In his sworn statement Applicant stated that he would "immediately and permanently discontinue any further use or involvement with any illicit drugs." By his own admission, Applicant used marijuana on July 4 and 6, 2002. (Applicant's letter in response to FORM, dated March 11, 2003) Applicant sought counseling for his drug dependencies and was admitted to a treatment program on February 27, 2003. Applicant was released from treatment on April 16, 2003, and submitted for the record a document listing his aftercare goals. (Applicant's facsimile submission of after care program, filed May 5, 2003)

On March 11, 2003, Applicant filed a response to the FORM in which he asserted that he believed himself to be a trustworthy person, that he had stopped smoking cigarettes and made other healthy changes in his lifestyle and associations to minimize occasions for drug involvement; and that he had voluntarily sought professional counseling for his drug and chemical dependencies. Applicant argued that his present behavior mitigated his history of drug and chemical abuse and made him a suitable candidate for a security clearance.

POLICIES

"[N]o one has a 'right' to a security clearance." *Department of the Navy v. Egan* 484 U.S. 518, 528 (1988). As Commander in Chief, the President has "the authority to . . . control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to occupy a position . . . that will give that person access to such information." *Id.* at 527. The President has restricted eligibility for access to classified information to "United States citizens . . . whose personal and professional history affirmatively indicates loyalty to the United States, strength of character, trustworthiness, honesty, reliability, discretion, and sound judgment, as well as freedom from conflicting allegiances and potential for coercion, and willingness and ability to abide by regulations governing the use, handling, and protection of classified information." Exec. Or. 12968, *Access to Classified Information*, §3.1(b) (Aug. 4, 1995). Eligibility for a security clearance is predicated upon the applicant meeting the security guidelines contained in the Directive. *See* Directive, Enclosure 2.

In the defense industry, the security of classified information is entrusted to civilian workers who must be counted on to safeguard classified information and material twenty-four hours a day. The Government is therefore properly concerned where available information indicates that an applicant for a security clearance may be involved in conduct that demonstrates poor judgment, untrustworthiness, or unreliability. These concerns include consideration of the potential as well as the actual risk that an applicant may deliberately or inadvertently fail to properly safeguard classified information.

An evaluation of whether the applicant meets the security guidelines includes consideration of a number of variables known as the whole person concept. In evaluating the relevance of an individual's conduct, the adjudicator should consider the following factors: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct; (3) the frequency and recency of the conduct; (4) the individual's age and maturity at the time of the conduct; (5) the voluntariness of participation; (6) the presence or absence of rehabilitation and other behavioral changes; (7) the motivation for the conduct; (8) the potential for pressure, coercion, exploitation, or duress; (9) the likelihood for continuation or recurrence. Directive, ¶ E2.2.1. Security clearances are granted only when "it is clearly consistent with the national interest to do so." Exec. Or. 10865 § 2. *See* Exec. Or. 12968 § 3.1(b).

Adjudicative Guideline H, Drug Involvement (Attachment 8 to Enclosure 2), is most pertinent to this case. Guideline H defines drugs as mood and behavior-altering substances, including drugs, materials, and other chemical compounds identified and listed in the Controlled Substances Act of 1970, as amended, including marijuana or cannabis, depressants, narcotics, stimulants, and hallucinogens, inhalants and other similar substances. ¶¶ E2.A8.1.1.2, E2.A8.1.1.2.1, E2.A8.1.1.2.2. Guideline H defines drug abuse as "the illegal use of drugs or use of a legal drug in a manner that deviates from approved medical direction." ¶ E2.A8.1.1.3.

The security concern identified under Guideline H is that improper or illegal involvement with drugs raises questions regarding an individual's willingness or ability to protect classified information. Drug abuse or dependence may impair social or occupational functioning, increasing the risk of an unauthorized disclosure of classified information. ¶ E2.A8.1.1.1. Conditions that could raise a security concern in this case and which may be disqualifying include:

E2.A8.1.2.1. Any drug abuse. . . ;

E2.A8.1.2.2: Illegal drug possession, including cultivation, processing, manufacture, purchase, sale, or distribution.

Relevant conditions that could mitigate security concerns about Applicant's drug use and involvement include:

E2.A8.1.3.1. The drug involvement was not recent;

E2.A8.1.3.2. The drug involvement was an isolated or a aberrational event;

E2.A8.1.3.3. A demonstrated intent not to abuse any drugs in the future.

E2.A8.1.3.4. Satisfactory completion of a prescribed drug treatment program, including rehabilitation and aftercare requirements, without recurrence of abuse, and a favorable prognosis by a credentialed medical professional.

Burden of Proof

An applicant's admission of the information in specific allegations relieves the Government of having to prove those allegations. If specific allegations and/or information are denied or otherwise controverted by the applicant, the Government has the initial burden of proving those controverted facts alleged in the Statement of Reasons. If the Government meets its burden (either by an applicant's admissions or by other evidence) and establishes conduct that creates security concerns under the Directive, the burden of persuasion then shifts to the applicant to present evidence in refutation, extenuation or mitigation sufficient to demonstrate that, despite the existence of conduct that falls within specific criteria in the Directive, it is nevertheless clearly consistent with the interests of national security to grant or continue a security clearance for the applicant.

A person seeking access to classified information enters into a fiduciary relationship with the Government based upon trust and confidence. Where the facts proven by the Government or admitted by the applicant raise doubts about the applicant's judgment, reliability or trustworthiness, the applicant has a heavy burden of persuasion to demonstrate that he or she is nonetheless security worthy. In *Egan*, 484 U.S. at 531, the Supreme Court concludes that "[t]he clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials." Accordingly, doubts against an applicant's security worthiness are to be resolved against the applicant.

CONCLUSIONS

Upon consideration of all the facts in evidence, and after application of all appropriate legal precepts, factors, and conditions, including those described above, I conclude the following with respect to each allegation under Guideline H, Drug Involvement, set forth in the SOR:

Subparagraph 1.a. of the SOR alleges that Applicant began using marijuana around 1992/1993 when he was a senior in high school. Subparagraph 1.b. of the SOR alleges that Applicant smoked marijuana on a weekly to a monthly average from approximately January 1994 to December 1997 (excluding the period from January 1996 to August 1996). Subparagraph 1.c. of the SOR alleges that on approximately three occasions in 1997, Applicant purchased approximately 1/8 ounce of marijuana for his personal use. Subparagraph 1.d. of the SOR alleges that from January 1998 to November 2001, Applicant smoked marijuana on an average of twice a month. Subparagraph 1.e. of the SOR alleges that Applicant purchased marijuana for his personal use on approximately six occasions in 1999, two occasions in 2000, and two occasions in 2001. Subparagraph 1.f. of the SOR alleges that Applicant experimented with mushrooms, also known as psilocybin, on two occasions, once in 1998 and once in 2000. Subparagraph 1.g. of the SOR alleges that Applicant used LSD once in 1999. Subparagraph 1.h. of the SOR alleges that Applicant used cocaine once in 1999.

Through Applicant's own admissions, the Government established a prima facie case that Applicant used and purchased marijuana and used psilocybin, cocaine, and LSD. Applicant has admitted the Guideline H drug involvement specified in the SOR and identified as disqualifying conditions under paragraphs E2.A.8.1.2.1 and E2.A.8.1.2.2 of Guideline H.

By his own admissions, Applicant's involvement with and use of marijuana spanned a period of ten years, from 1992 to 2002, with use of and experimentation with psilocybin, LSD, and cocaine occurring concurrently with the marijuana use. The facts show that Applicant's use of psilocybin, LSD, and cocaine was not recent, and thus mitigating factor E2.A.8.1.3.1 applies to the allegations in subparagraphs 1.f., 1.g., and 1.h. However, Applicant's last use of marijuana occurred less than a year ago, in July 2002, seven months after he expressed his determination never to use illegal drugs again and 18 months after he completed a security clearance application, which put him on notice that use of drugs was a security concern. Thus, mitigating factor E2.A.8.1.3.1 does not apply to Applicant's marijuana use. Applicant's expressed intention to stop using drugs is laudable, but as yet not demonstrated as a definite and long term change in his behavior. The fact remains that Applicant's serious illegal drug involvement occurred throughout his late adolescent and young adult years and was neither an isolated nor aberrational part of his life. Thus, mitigating condition E2.A.8.1.3.2 does not apply to the facts of his case.

Applicant has provided evidence of his participation in a counseling program of approximately 7 weeks, from February 27, 2003 to April 16, 2003, and his development of aftercare goals for a drug-free life. It is not clear from the record whether Applicant's participation in the drug counseling program was prescribed or voluntary, or both, nor has a credentialed medical professional provided a prognosis and rehabilitation assessment. Accordingly, mitigating factor E2.A.8.1.3.4 is not applicable, and the allegations in subparagraphs 1.a. through 1.h. of the SOR under Guideline H must

be concluded against the Applicant.

In my evaluation of the record, I have carefully considered each piece of evidence in the context of the totality of evidence and under all of the Directive guidelines that were generally applicable or might be applicable under the facts of the case. [\(U\)](#) Under the whole person concept, I conclude that Applicant has not successfully overcome the Government's case opposing his request for a DoD security clearance.

FORMAL FINDINGS

Formal findings For or Against Applicant on the allegations set forth in the SOR, as required by Section E3.1.25 of Enclosure 3 of the Directive are:

Paragraph 1, Drug Involvement (Guideline H): **AGAINST THE APPLICANT**

Subparagraph 1.a.: Against the Applicant

Subparagraph 1.b.: Against the Applicant

Subparagraph 1.c.: Against the Applicant

Subparagraph 1.d.: Against the Applicant

Subparagraph 1.e.: Against the Applicant

Subparagraph 1.f.: Against the Applicant

Subparagraph 1.g.: Against the Applicant

Subparagraph 1.h.: Against the Applicant.

DECISION

In light of all the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant or continue a security clearance for the Applicant. Clearance is denied.

Joan Caton Anthony

Administrative Judge

1. Although it was not alleged in the SOR, under the provisions of 10 U.S.C. § 986, any person who is an unlawful user of a controlled substance as defined in section 102 of the Controlled Substances Act (21 U.S.C. § 802), may not be granted access to classified information or have access to classified information renewed.